No. 14-844

In the Supreme Court of the United States

ANTOINE BRUCE, PETITIONER

v.

CHARLES E. SAMUELS, JR., ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENTS

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QUESTION PRESENTED

Under the Prison Litigation Reform Act of 1995, Pub. L. No. 104-134, 110 Stat. 1321-66, when an *in forma pauperis* prisoner files a civil lawsuit or an appeal in federal court and cannot pay the full filing fee, he generally must make an initial partial payment, 28 U.S.C. 1915(b)(1), and then must pay the rest of the filing fee by "mak[ing] monthly payments of 20 percent of the preceding month's income credited to [his] account" (so long as his account contains more than $10), 28 U.S.C. 1915(b)(2).

The question presented is whether, when an *in forma pauperis* prisoner has filed more than one lawsuit or appeal, his monthly payment is 20 percent of his monthly income regardless of how many cases he has filed or instead 20 percent of his monthly income for each case that he has filed.

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-18a) is reported at 761 F.3d 1.

JURISDICTION

The opinion (Pet. App. 1a-18a) and orders (Pet. App. 19a-22a) of the court of appeals were filed on August 5, 2014. A petition for rehearing was denied on October 22, 2014 (Pet. App. 23a). The court of appeals issued additional orders implementing its opinion on October 22, 2014 (Pet. App. 24a-27a), and on November 21, 2014 (Pet. App. 28a-30a). The petition for a writ of certiorari was filed on January 16, 2015. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The general rule in federal court is that litigants must pay certain fees upon filing a civil action or a notice of appeal. See 28 U.S.C. 1913, 1914, 1917; Fed. R. App. P. 3(e). However, under the *in forma pauperis* statute, a court may allow a litigant to proceed "without prepayment of fees or security therefor" if the litigant establishes that he is unable to pay the required fees. 28 U.S.C. 1915(a)(1). Before 1996, indigent prisoners could rely on this provision to file lawsuits in federal court without paying any filing fees.

In 1996, concerned that the volume of prisoner litigation was making it difficult for federal courts to separate the wheat from the chaff, Congress enacted the Prison Litigation Reform Act of 1995 (PLRA), Pub. L. No. 104-134, 110 Stat. 1321-66. The PLRA reflects Congress's judgment that the federal courts need "fewer and better prisoner suits." *Jones* v. *Bock*, 549 U.S. 199, 203-204 (2007). To that end, Congress provided for special treatment of prisoner claims. Among other things, under the PLRA, a prisoner who has been granted *in forma pauperis* status cannot avoid payment of filing fees altogether. Pet. App. 5a. Instead, the prisoner is obligated to "pay the full amount of [the] filing fee" for a civil action or appeal. 28 U.S.C. 1915(b)(1).

If a prisoner cannot pay the full fee upfront when he files the action or appeal, the PLRA allows him to make an initial partial payment and then make regular monthly payments to pay the balance due. The statute provides formulas for these payments. The "initial partial filing fee" is 20 percent of the greater of the "average monthly deposits" into the prisoner's

trust account or the "average monthly balance" in that account during the past six months. 28 U.S.C. 1915(b)(1). The "monthly payment[]" is calculated as "20 percent of the preceding month's income credited to the prisoner's account." 28 U.S.C. 1915(b)(2). The monthly payments continue "until the filing fees are paid." *Ibid.*

The prisoner need not make an initial partial payment at the start of a lawsuit or appeal if he has no funds available with which to do so. See 28 U.S.C. 1915(b)(4) ("In no event shall a prisoner be prohibited from bringing a civil action or appealing a civil or criminal judgment for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee."); see also 28 U.S.C. 1915(b)(1) (requiring collection of the initial payment only "when funds exist"). In addition, no monthly payments are required unless the prisoner has more than $10 in his trust account. 28 U.S.C. 1915(b)(2).

2. This case arises out of a lawsuit filed by federal prisoner Jeremy Pinson in the United States District Court for the District of Columbia. Pet. App. 2a-3a. Pinson is serving a twenty-year sentence for threatening the President and other offenses, and he "has made frequent use of the federal courts during his time in prison," filing "more than 100 civil actions and appeals." *Id.* at 2a.

In this lawsuit, Pinson sued various Bureau of Prisons (BOP) officials (respondents in this Court) to challenge his placement in a special management unit in his prison. Pet. App. 2a-3a.[1] The district court

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[1] Respondents were named as defendants in their official and individual capacities, see Compl. 2 (D.D.C. Jan. 19, 2010), but no summonses were issued in the district court and no respondent has

concluded that venue was inappropriate in the District of Columbia because Pinson was housed in a prison in Alabama. *Id.* at 3a. The court therefore transferred the case to the Northern District of Alabama. *Ibid.*

3. Pinson appealed the transfer order. Pet. App. 3a. He also sought *in forma pauperis* status and asked the court of appeals to stay collection of filing fees on the ground that he is already paying 20 percent of his monthly income for filing fees in other cases. *Id.* at 4a; see Mot. to Stay Collection of Fees 1 (D.C. Cir. Apr. 5, 2010).

Petitioner is a federal inmate who is serving a fifteen-year sentence for armed kidnapping and assault with the intent to kill. See F6805-03 Judgment at 1 (D.C. Super. Ct. Nov. 1, 2004). He has filed numerous federal lawsuits while imprisoned. See note 7, *infra*.

Petitioner and several other federal prisoners sought to join Pinson's lawsuit as co-plaintiffs. Pet. App. 4a. The court of appeals added petitioner (and others) to the lawsuit. *Id.* at 4a-5a. Petitioner sought *in forma pauperis* status and also joined Pinson's motion to stay the collection of filing fees. *Ibid.* Petitioner stated that he had previously incurred obligations for filing fees in other cases under the PLRA. *Ibid.*; see Joinder to Mot. to Stay Collection 1 (D.C. Cir. Aug. 26, 2013). As a result, petitioner (like Pinson) contended that he should not be required to make any monthly payments towards the filing fee in this case until his prior fee obligations were satisfied.

4. The court of appeals declined to stay collection of the filing fees and dismissed petitioner's claims for

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been served. Respondents appear here only in their official capacity.

lack of standing. Pet. App. 1a-18a. As relevant here, the court granted petitioner *in forma pauperis* status, so that he may pay his filing fee in installments rather than upfront. *Id.* at 8a; see 28 U.S.C. 1915(a) and (b). But the court rejected petitioner's argument about how his monthly payments should be calculated.

The court of appeals observed that there are two possible approaches to calculating a prisoner's monthly payment under 28 U.S.C. 1915(b)(2): the per-prisoner approach, where a prisoner pays 20 percent of his monthly income regardless of how many cases he has filed, and the per-case approach, where a prisoner pays 20 percent of his monthly income for each case that he has filed. Pet. App. 12a-13a. The court concluded that the per-case approach best comports with the statute's text, structure, and purposes. *Id.* at 14a-17a.

The court explained that the statute's text and structure "indicate that its provisions apply *to each action or appeal* filed by a prisoner." Pet. App. 14a. The first part of the statute, subsection (b)(1), uses the singular to refer to a prisoner's "threshold obligation to make an initial partial payment": if a prisoner brings "*a civil action* or *files an appeal*," the court must collect "*an initial partial filing fee*." *Ibid.* (quoting 28 U.S.C. 1915(b)(1) (emphases added)). This language, the court noted, "calls for the assessment of the initial partial filing fee *each time* a prisoner brings a civil action or files an appeal." *Id.* at 14a-15a (internal quotation marks omitted).

The court then explained that the "initial partial filing fee" set out in subsection (b)(1) is the "triggering condition" for the second part of the statute, subsection (b)(2), which requires the monthly payments.

Pet. App. 15a. "Given that the initial fee required by subsection (b)(1) applies on a per-case basis," the court reasoned, "it follows that subsection (b)(2)'s monthly payment obligation likewise applies on a per-case basis." *Ibid.* The court noted that its conclusion is "fortifie[d]" by other parts of Section 1915, which also refer to a single case. *Id.* at 15a-16a.

The court also concluded that the per-case approach serves the PLRA's purpose of deterring frivolous prisoner lawsuits. Pet. App. 17a. As the court explained, "[c]apping monthly withdrawals at twenty percent of an inmate's income, regardless of the number of suits filed, would diminish the deterrent effect of the PLRA once a prisoner files his first action." *Ibid.* And "[n]othing in the statute suggests that a second or third action should be treated any differently than the first." *Id.* at 16a. Finally, the court rejected petitioner's argument that the per-prisoner approach is necessary to avoid concerns about access to the courts. The court noted that the PLRA includes a built-in safety valve that allows a prisoner with no assets to proceed without paying an initial filing fee. *Ibid.* (discussing 28 U.S.C. 1915(b)(4)). And, the court observed, the statute permits monthly payments only when the prisoner has at least $10 in his account. *Id.* at 16a-17a (discussing 28 U.S.C. 1915(b)(2)). As a result, and assuming that the petitioner is not subject to the PLRA's three-strikes provision, "even if 100 percent of a prisoner's income were subject to recoupment for filing fees, the statute assures his ability to initiate an action." *Id.* at 17a.

5. The court of appeals then entered a series of orders setting out the amounts petitioner must pay for this case. Pet. App. 19a-30a. The court stated that

petitioner is obligated to pay $90 (one-fifth of the filing fee), with an initial partial payment of $0.64 and monthly payments of 20 percent of his previous month's income (so long as the amount in his trust account exceeds $10). *Id.* at 28a-29a.[2]

DISCUSSION

Petitioner contends (Pet. 7-22) that this Court should grant certiorari to resolve a conflict in the circuits about the appropriate formula for calculating an *in forma pauperis* prisoner's monthly payments under the PLRA. The court of appeals correctly held that the PLRA requires prisoners to make their monthly payments on a per-case basis and that they cannot avoid making payments in their current case because they have incurred filing fee obligations in other cases. Respondents agree with petitioner, however, that this case presents a recurring question of substantial importance on which the circuits have divided and that this case is an appropriate vehicle in which to decide the question. This Court's review of the question presented therefore is warranted.

1. The court of appeals correctly held that petitioner is required to make monthly payments toward the filing fee in this case, even though he is also mak-

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[2] The court of appeals decided, without the benefit of briefing on the issue, that each of five co-plaintiffs should pay a proportionate share of the $450 filing fee. See Pet. App. 24a, 28a. Other circuits have required each prisoner in a multi-prisoner case to pay the full filing fee. See, *e.g.*, *Hagan* v. *Rogers*, 570 F.3d 146, 155-156 (3d Cir. 2009); *Boriboune* v. *Berge*, 391 F.3d 852, 855-856 (7th Cir. 2004); *Hubbard* v. *Haley*, 262 F.3d 1194, 1197-1198 & n.2 (11th Cir. 2001), cert. denied, 534 U.S. 1136 (2002); but see, *e.g.*, *Talley-Bey* v. *Knebl*, 168 F.3d 884, 887 (6th Cir. 1999). The government does not seek review of the proportionate-share issue before this Court.

ing monthly payments for other cases he has filed. Section 1915(b) sets out the rules for payment of filing fees by prisoners proceeding *in forma pauperis* in federal court. When a prisoner "brings a civil action or files an appeal in forma pauperis," he owes "the full amount of [the] filing fee," which is paid through an initial partial payment and monthly payments. 28 U.S.C. 1915(b)(1) and (2). The "initial partial filing fee" is 20 percent of the greater of the average monthly deposits in the prisoner's account or the average monthly balance of the account over the preceding six months. 28 U.S.C. 1915(b)(1). "After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account." 28 U.S.C. 1915(b)(2). Those payments are sent from the agency having custody of the prisoner to the court so long as "the amount in the account exceeds $10." *Ibid.*

a. The text and structure of Section 1915(b) make clear that monthly payments are calculated on a per-case basis. Both subsection (b)(1) and subsection (b)(2) are written in the singular, referring to a single case or appeal. For example, Section 1915(b)(1) specifies that "if a prisoner brings *a civil action* or files *an appeal* in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee," which consists of "*an initial partial filing fee*" and "monthly payments" towards the fee. 28 U.S.C. 1915(b)(1) and (2) (emphases added). All agree that the first part of the statute, which addresses the initial partial filing fee, refers to a single case. Pet. App. 15a ("Amicus acknowledges that the initial partial filing fee accrues

in each case, regardless of the number of suits initiated.").

Given that subsection (b)(1) operates on a per-case basis, the most logical reading of subsection (b)(2) is that it operates in the same manner. As the court of appeals explained (Pet. App. 15a), the first part of the statute sets out the "'triggering condition' for the monthly installments" in the second part of the statute, and so "the two provisions should be read in tandem." Just as the statute "calls for assessment of the initial partial filing fee *each time* a prisoner 'brings a civil action or files an appeal,'" the 20 percent monthly payment must be made for *each* appeal. *Id* at 14a-15a (quoting 28 U.S.C. 1915(b)(1)).

That conclusion is reinforced by the language in subsection (b)(2) that explains how the monthly payments will be made: the statute directs the "agency having custody of the prisoner" to "forward payments from the prisoner's account to the clerk of the court each time the amount in the account exceeds $10 until the filing fees are paid." 28 U.S.C. 1915(b)(2). The same court that "assess[ed]" the initial partial filing fee under subsection (b)(1) receives monthly payments under subsection (b)(2). And since the court assesses the partial filing fee on a per-case basis, it follows that the same court would collect the monthly follow-up payments on a per-case basis as well.[3]

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[3] Contrary to petitioner's contention (Pet. 6 n.1), the language directing "the clerk of the court" to collect "fees" (28 U.S.C. 1915(b)(2)) does not support the per-prisoner approach. Although petitioner assumes (Pet. 6 n.1) that the term "fees" must refer to multiple cases, he overlooks the fact that several different types of fees can apply in a single case. See, *e.g.*, D.C. Cir., *Court of Appeals Miscellaneous Fee Schedule* 1-2 (Dec. 1, 2014), http://

The statute is replete with language confirming that it refers to an individual case, not all of a prisoner's cases combined. See, *e.g.*, 28 U.S.C. 1915(a) (permitting a federal court to "authorize the commencement, prosecution or defense of *any suit, action* or *proceeding*, civil or criminal, or *appeal* therein, without prepayment of fees or security therefor, by a person" who demonstrates indigency (emphases added)); 28 U.S.C. 1915(c) (allowing "*the* court" to direct that "*the* record" or transcript of proceedings be printed at government expense (emphases added)); 28 U.S.C. 1915(d) (authorizing "[t]he officers of *the* court" to serve process (emphasis added)); 28 U.S.C. 1915(e) (directing "*the* court [to] dismiss *the* case at any time if *the* court determines that * * * the allegation of poverty is untrue" or that "*the* action or appeal" is frivolous or otherwise flawed (emphases added)); 28 U.S.C. 1915(f) (permitting the court to award "costs at the conclusion of *the* suit or action as in other proceedings" (emphasis added)); see also Pet. App. 15a-16a.

b. The per-case approach adopted by the court of appeals is consistent with the PLRA's purposes. Congress enacted the PLRA in part to deter frivolous litigation by prisoners in federal court. See, *e.g.*, *Skinner* v. *Switzer*, 131 S. Ct. 1289, 1299 (2011) (Congress placed "a series of controls on prisoner suits" in

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www.cadc.uscourts.gov/internet/home.nsf/Content/court+fees. Indeed, the same language is used in Section 1915(b)(1), see 28 U.S.C. 1915(b)(1) (noting that the court "shall assess and, when funds exist, collect, as a partial payment *of any court fees* required by law, an initial partial filing fee" (emphasis added)), and petitioner correctly concedes that Section 1915(b)(1) applies to only a single case.

order "to prevent sportive filings in federal court."); *Jones* v. *Bock*, 549 U.S. 199, 203-204 (2007) (PLRA was designed to "ensur[e] that the flood of nonmeritorious claims does not submerge and effectively preclude consideration of the allegations with merit"). One way that Congress sought to achieve that goal was by requiring prisoners to pay their litigation expenses. The "modest monetary outlay" required when a prisoner files a lawsuit "force[s] prisoners to think twice about the case and not just file reflexively." 141 Cong. Rec. 14,572 (1995) (Sen. Kyl). After the PLRA, prisoners no longer have "little to lose and everything to gain"; now, prisoners "know that they will have to pay" court fees and therefore will be "less inclined" to file a nonmeritorious suit. *Id.* at 14,570-14,571 (Sen. Dole).

Requiring prisoners who pursue multiple lawsuits to make multiple monthly payments is consistent with the PLRA's purposes. Under the per-case approach, a prisoner with available funds has an economic disincentive to bring a second or subsequent lawsuit, which serves as a deterrent against frivolous litigation. See 141 Cong. Rec. at 14,571 (Sen. Dole) (stressing the need for an "economic disincentive to going to court"); Pet. App. 16a ("Nothing in the statute suggests that a second or third action should be treated any differently than the first."). Under the per-prisoner approach, by contrast, the prisoner pays the same monthly amount no matter how many lawsuits he has filed. The per-prisoner approach allows a prisoner to postpone his monthly payments for any additional lawsuits

at least until after all previous filing fees had been paid, perhaps indefinitely.[4]

The per-case method also avoids practical problems and administrative difficulties that Congress could not have intended. The PLRA's direction that the prison make payments to "*the* clerk of *the* court," 28 U.S.C. 1915(b)(2) (emphases added), demonstrates that Congress expected that each court would collect a monthly payment without regard to any payments being made to other courts. Under a per-prisoner approach, whether a court may obtain monthly payments depends on what other courts are doing, and the coordination becomes more difficult the more lawsuits the prisoner has filed. The fact that Section 1915(b)(2) offers no guidance on coordinating payments for multiple lawsuits reinforces that it applies only to a single lawsuit.

c. Contrary to petitioner's contention (Pet. 16-17), the canon of constitutional avoidance does not justify adopting the per-prisoner approach to calculating monthly payments under Section 1915(b)(2). The statute contains an important safety-valve provision

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[4] Several circuits have held that *in forma pauperis* prisoners need not continue to make monthly installment payments once they have been released from prison. See, *e.g.*, *DeBlasio* v. *Gilmore*, 315 F.3d 396, 399 (4th Cir. 2003); *McGore* v. *Wrigglesworth*, 114 F.3d 601, 612-613 (6th Cir. 1997); *McGann* v. *Commissioner, Soc. Sec. Admin.*, 96 F.3d 28, 29-30 (2d Cir. 1996); but see, *e.g.*, *Gay* v. *Texas Dep't of Corr. State Jail Div.*, 117 F.3d 240, 242 (5th Cir. 1997). Even if a circuit allows collection post-incarceration, there is no guarantee of payment because the statute does not provide a mechanism for collecting fees from prisoners who have been released. See 28 U.S.C. 1915(b)(2) (directing the prison "having custody of the prisoner" to collect monthly payments from the prisoner's account).

that ameliorates any constitutional concerns about access to the courts. The statute provides that "[i]n no event shall a prisoner be prohibited from bringing a civil action or appealing civil or criminal judgment" because "the prisoner has no assets and no means by which to pay the initial partial filing fee." 28 U.S.C. 1915(b)(4); see 28 U.S.C. 1915(b)(1) (initial partial filing fee is due only "when funds exist"). That provision ensures that a prisoner will not be prohibited from pursuing a meritorious claim due to lack of funds. Petitioner is therefore mistaken in contending (Pet. 17) that a prisoner with no assets would have "no ability to file any lawsuits."

Moreover, as the D.C. Circuit noted, the statute requires monthly payments only so long as "amount in the [prisoner's trust] account exceeds $10." 28 U.S.C. 1915(b)(2). A prisoner therefore would never be required to pay "100% of [his] income[]" to court fees. Pet. 15. More important, prison systems are constitutionally bound to provide inmates with the necessities of life, including adequate food, clothing, shelter, and medical care, *Farmer* v. *Brennan*, 511 U.S. 825, 832 (1994), as well as with "paper and pen to draft legal documents" and "stamps to mail them," *Bounds* v. *Smith*, 430 U.S. 817, 824-825 (1977). Adopting the per-case approach under Section 1915(b)(2) therefore would not force a prisoner to choose between paying for a lawsuit and satisfying his most basic needs. Only those prisoners who can afford to make filing-fee payments will be required to do so, while those who cannot make any payments will not be barred from pursuing their claims.

Finally, a prisoner with a meritorious claim may owe nothing at the end of the litigation. See Fed. R.

Civ. P. 54(d)(1) (allowing an award of costs); see also 28 U.S.C. 1920(1) (explaining that "costs" includes filing fees); 28 U.S.C. 2412(a)(1) (allowing costs to be recovered against the United States). For that reason as well, petitioner is wrong to assert that the per-case approach prevents prisoners from pursuing meritorious claims.[5]

2. The courts of appeals have disagreed about whether monthly payments under 28 U.S.C. 1915(b)(2) should be calculated using the per-prisoner approach or the per-case approach. The court of appeals recognized this circuit conflict in its opinion. See Pet. App. 12a-14a.

The Fifth, Seventh, Eighth, and D.C. Circuits have adopted the per-case approach, holding that a prisoner who has filed multiple lawsuits must make monthly payments for each of his cases (so long as his account balance exceeds the specified threshold amount). See Pet. App. 14a-17a; *Atchison* v. *Collins*, 288 F.3d 177, 180-181 (5th Cir. 2002) (per curiam); *Lefkowitz* v. *Citi-Equity Grp., Inc.*, 146 F.3d 609, 612 (8th Cir. 1998), cert. denied, 525 U.S. 1154 (1999); *Newlin* v. *Helman*, 123 F.3d 429, 436 (7th Cir. 1997), cert. denied, 522 U.S. 1054 (1998), overruled in part on other grounds by *Lee* v. *Clinton*, 209 F.3d 1025, 1026-1027 (7th Cir. 2000), and *Walker* v. *O'Brien*, 216 F.3d 626, 634-637 (7th Cir.), cert. denied, 531 U.S. 1029 (2000). The Tenth Circuit has reached the same conclusion in an unpublished opinion. See *Christensen* v. *Big Horn Cnty. Bd. of Cnty. Comm'rs*, 374 Fed. Appx. 821, 832-833 (2010) (unpublished).

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[5] Even a prisoner barred from *in forma pauperis* status entirely may have a second safety valve—he may be able to file his federal claim in state court.

In contrast, the Second, Third, and Fourth Circuits have adopted the per-prisoner approach, holding that a prisoner who has filed multiple lawsuits need only make one monthly payment for all of his lawsuits. See *Siluk* v. *Merwin*, No. 11-3996, 2015 WL 1600236, at *3-*9 (3d Cir. Apr. 21, 2015); *Torres* v. *O'Quinn*, 612 F.3d 237, 242-248 (4th Cir. 2010); *Whitfield* v. *Scully*, 241 F.3d 264, 276-277 (2d Cir. 2001).[6]

3. This Court's review of the question presented is warranted. The disagreement in the circuits is well established and is unlikely to dissipate without this Court's intervention. The result of the circuit split is that similarly situated prisoners are subject to different payment rules depending on the circuit in which they brought suit. Indeed, the same prisoner may be subject to different rules if he brings suit in a circuit that has adopted the per-case approach and a circuit that has adopted the per-prisoner approach. Such situations are not infrequent in the federal system, especially because federal prisoners may be transferred from a prison in one circuit to a prison in another circuit. Petitioner, for example, has filed numerous lawsuits, in circuits taking the per-case approach and circuits taking the per-prisoner approach.[7]

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[6] In addition to adopting the per-prisoner approach, the Second Circuit also held that the 20 percent monthly payment limit applies separately for filing fees and other court costs, so that an inmate who has filed multiple lawsuits and owes both fees and costs pays a maximum of 40 percent of his monthly income. *Whitfield*, 241 F.3d at 277-278.

[7] See, *e.g.*, *Bruce* v. *Alvarez*, No. 1:14-CV-03232 (D. Colo. filed Nov. 26, 2014); *Bruce* v. *Wilson*, No. 1:13-CV-00491 (D. Colo. filed Feb. 25, 2013); *Bruce* v. *Holbrook*, No. 1:10-CV-03287 (N.D. Ala. filed Nov. 29, 2010); *Bruce* v. *Chambers*, No. 3:10-CV-02256 (M.D. Pa. filed Nov. 1, 2010); *Bruce* v. *Reese*, No. 1:09-CV-02378 (N.D.

And although petitioner was incarcerated at a facility in Talladega, Alabama, when this lawsuit was initiated, see, *e.g.*, 1:09-CV-02378 Compl. at 1 (N.D. Ala. Nov. 24, 2009), he is now incarcerated in Florence, Colorado, see BOP, *Inmate Locator*, http://www.bop.gov/inmateloc (last visited May 6, 2015) (BOP Register No. 35363-007). Thus, there is a distinct possibility that an inmate will incur multiple fee obligations in courts that interpret Section 1915(b) inconsistently.

Further, the disagreement in the circuits has created practical difficulties in administering the PLRA's payment scheme. The BOP is responsible for collecting the monthly payments at issue from federal prisoners and forwarding them to the relevant clerk of court. See 28 U.S.C. 1915(b)(2). Because of the divergence in the circuits, the BOP must use different methods to collect monthly payments in different circuits.

Moreover, the BOP experience is only part of the problem. The vast majority of prisoner litigation in the federal courts is brought by state prisoners.[8] Although state prisoners may be less likely than federal prisoners to initiate litigation in multiple circuits, it remains the case that different state prisoners are subject to different collection rules depending on the

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Ala. filed Nov. 24, 2009). The government has not argued in this case that petitioner is precluded from obtaining *in forma pauperis* status under the "three-strikes" provision in 28 U.S.C. 1915(g).

[8] See, *e.g.*, U.S. Courts, *Table C-3, U.S. District Courts—Civil Cases Commenced, by Nature of Suit and District, During the 12-Month Period Ending September 30, 2014*, at 1, http://www.uscourts.gov/uscourts/Statistics/JudicialBusiness/2014/appendices/C03Sep14.pdf (last visited May 6, 2015) (reporting that prisoner suits against federal officials are significantly outnumbered by prisoner suits against non-federal officials).

circuit in which they are incarcerated. This Court's review is warranted to provide a uniform rule for all *in forma pauperis* prisoners who file suit in federal court.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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MAY 2015